

NOTICE

Memorandum decisions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d) and Paragraph 7 of the Guidelines for Publication of Court of Appeals Decisions (Court of Appeals Order No. 3). Accordingly, this memorandum decision may not be cited as binding authority for any proposition of law.

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

WILLIAM GEORGE YATCHMENOFF JR.,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11432
Trial Court No. 3AN-12-7733 CI

MEMORANDUM OPINION

No. 6331 — May 18, 2016

Appeal from the Superior Court, Third Judicial District,
Anchorage, Philip R. Volland, Judge.

Appearances: Tracey Wollenberg, Assistant Public Defender,
and Quinlan Steiner, Public Defender, Anchorage, for the
Appellant. Michael Sean McLaughlin, Assistant Attorney
General, Office of Criminal Appeals, Anchorage, and Craig W.
Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock,
Superior Court Judge.*

Judge SUDDOCK.

* Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Nine years after his conviction for first-degree sexual abuse of a minor, William George Yatchmenoff Jr. filed a pro se application for post-conviction relief.¹ The superior court appointed the Public Defender Agency to represent Yatchmenoff. The State then moved to dismiss Yatchmenoff's petition as untimely. After Yatchmenoff's attorney failed to respond, the court granted the State's motion and dismissed Yatchmenoff's petition for post-conviction relief.

The very next day, Yatchmenoff's attorney filed for an extension of time to amend the petition. The attorney acknowledged the timeliness issue and indicated that he was actively investigating it. The court did not rule on the attorney's request for an extension.

Yatchmenoff appeals the dismissal of his application for post-conviction relief. The State concedes error, a concession we find to be well taken.²

Yatchmenoff's application was filed well outside the one-year statute of limitations.³ But based on the information in his application for post-conviction relief, he was entitled to have a court-appointed lawyer investigate whether he "might be able to claim the benefit of one of the exceptions or tolling periods specified in th[e] statute of limitations."⁴

¹ See *Yatchmenoff v. State*, 2003 WL 21350242 (Alaska App. June 11, 2003) (unpublished).

² See *Marks v. State*, 496 P.2d 66, 67-68 (Alaska 1972).

³ See AS 12.72.020(a)(3)(A).

⁴ *Holden v. State*, 172 P.3d 815, 816 (Alaska App. 2007); see also *Alex v. State*, 210 P.3d 1225, 1228-29 (Alaska App. 2009) (holding that where an applicant claims an exemption from the normal statute of limitations, a post-conviction relief application is not "untimely" until that claim is resolved against the applicant).

When an attorney misses deadlines, the court has avenues short of dismissal to address counsel's dilatory conduct.⁵ Litigation-ending sanctions are disfavored and the court's discretion to impose such a sanction is narrowly limited.⁶ Under the facts of this case, the superior court abused its discretion by dismissing the petition without exploration of lesser sanctions.

Conclusion

We VACATE the judgment of the superior court and REMAND for further proceedings consistent with this decision. We do not retain jurisdiction of this case.

⁵ See *Howarth v. State*, 13 P.3d 754, 756-57 (Alaska App. 2000).

⁶ See *Arbelovsky v. Ebasco Services, Inc.*, 922 P.2d 225, 227 (Alaska 1996); *Dayton v. State*, 198 P.3d 1189, 1193 (Alaska App. 2009) (finding litigation-ending sanction unjustified when applicant ultimately filed amended petition, State alleged no prejudice, and court did not consider lesser sanctions).